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**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK**

DAVE SHOSTACK,	X	
	:	Case No. 19-9162
	:	
Plaintiff,	:	(Removed from the Civil Court of
	:	the City of New York, County of
v.	:	New York, Index No. CV-025002-
	:	19/NY)
BANK OF AMERICA CORPORATION,	:	
	:	NOTICE OF REMOVAL BY
Defendant.	:	DEFENDANT BANK OF
	:	<u>AMERICA, N.A.</u>
	X	

PLEASE TAKE NOTICE that Defendant Bank of America, N.A. (“BANA”), erroneously sued herein as “Bank of America Corporation,” hereby removes the above-titled action from the Civil Court of the City of New York, County of New York, in which the action is currently pending, to the United States District Court for the Southern District of New York on the grounds that this Court has original and removal jurisdiction over this civil action pursuant to 28 U.S.C. §§ 1331, 1441, 1446 and all other applicable bases for removal. BANA states as follows in support of this notice:

PLEADINGS AND FILINGS IN SUPREME COURT

1. On or about September 24, 2019, Plaintiff Dave Shostack (“Plaintiff”) filed a Complaint in the Civil Court of the City of New York, County of New York (“New York County Civil Court”), captioned *Dave Shostack v. Bank of America Corporation*, bearing Index No. CV-

025002-19/NY. A true and correct copy of the Summons and Complaint filed by Plaintiff in the New York County Civil Court Action is attached hereto as Exhibit A.

2. On September 27, 2019, BANA was served with a copy of the Complaint.

TIMELINESS OF REMOVAL

3. This action has not been previously removed to federal court.

4. This Notice of Removal is timely filed. Under 28 U.S.C. § 1446(b) the Notice of Removal may be filed within thirty days of receipt of the initial pleading setting forth the claim. Specifically, 28 U.S.C. § 1446(b), provides that the Notice of Removal is to be filed within thirty days of receipt “through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based . . .” BANA has filed this Notice of Removal within 30 days of the first date upon which it was served with any paper giving it knowledge that the action was removable, i.e., the Complaint.

ORIGINAL AND REMOVAL JURISDICTION

5. In the New York County Civil Court Action, Plaintiff alleges violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.* (See Complaint ¶¶ 1, 5, 13-15.) Accordingly, the New York County Civil Court Action presents a federal question within the meaning of 28 U.S.C. § 1331, because it involves claims and/or issues arising in whole or in part under the Constitution, laws, or treaties of the United States. Therefore, this Court has original jurisdiction over the New York County Civil Court Action.

6. Under 28 U.S.C. § 1441 (a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

7. Plaintiff's Complaint presents a federal question for determination, i.e., whether BANA violated the TCPA. Accordingly, this case is a civil action over which this District Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and is one which may be removed to this Court by BANA pursuant to 28 U.S.C. § 1441 *et seq.* in that it arises under Title VII. (*See generally* Exhibit A).

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a).

9. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon or otherwise received by BANA are attached hereto as Exhibit A.

10. In accordance with 28 U.S.C. § 1446(d), BANA will give prompt written notice of this Notice of Removal to all parties and to the Clerk of the New York County Civil Court. A copy of the Notice of Filing of Notice of Removal to the New York County Civil Court is attached hereto as Exhibit B.

11. By filing this Notice of Removal, BANA does not waive any defenses either procedural or substantive, which may be available to it, including, but not limited to, its right to contest *in personam* jurisdiction, improper service of process or the absence of venue in this Court or in the court from which the action has been removed.

WHEREFORE, BANA removes the New York County Civil Court Action from the Civil Court of the City of New York, County of New York to the United States District Court for the Southern District of New York.

Dated: New York, New York
October 2, 2019

Respectfully submitted,

/s/ Shan P. Massand

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TO: Clerk of the Court

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Self-Represented Plaintiff